

IN THE MATTER OF
DIANE C. ANDERSON

Petitioner

: BEFORE THE
:
: HOWARD COUNTY
:
: BOARD OF APPEALS
:
: HEARING EXAMINER
:
: BA Case No. 08-0016V

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DECISION AND ORDER

On May 27, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Diane C. Anderson, for a variance to reduce the 30-foot rear setback to approximately 7 feet for a two-story addition to an existing noncomplying single family detached dwelling located in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. Diane Anderson, the property owner's daughter, and Joshua Hines, testified in support of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property, known as 9250 Coleman-Thomas Road, is located in the 6th Election District. It is identified as Tax Map 42, Grid 10, as Parcel 210 (the "Property").

2. The Property is located on the west side of Coleman-Thomas Road, about 75 feet south of Cartersville Road. The 12-foot wide Coleman-Thomas Road lies within a 30-foot prescriptive right-of-way. The Property is about 120 feet wide along Coleman-Thomas Road and between 45 and 500 feet deep. It is improved by an approximately 30' by 22' foot, one-story, single-family detached dwelling situated in the Property's mid-section and some 6 or fewer feet from Coleman-Thomas Road. Behind the dwelling is a small parking area.

3. Adjacent properties are also zoned R-12. To the west, the residential lots are improved with two-story frame single-family detached dwellings fronting on Thorton Woods. The properties to the east, south, and north are improved with single-family dwellings fronting on Coleman-Thomas Road.

4. The petition included a copy of a letter dated August 17, 2007 from George Beisser to the Petitioner stating that the Parcels 210 and 305 would be treated as a single lot, Parcel 210.

5. The Petitioner is requesting a variance from the 30-foot rear setback to construct a two-story addition to the dwelling's rear. They also propose to add a second story above the existing dwelling, but this addition is not part of the requested variance.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other

existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A "practical difficulty" is shown when the strict letter of the zoning regulation would "unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily

burdensome." *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's narrowness and small size are unique physical features. Additionally, while existing structures may not be considered "unique" features of a property, the existing dwelling is partially situated within the required 7.5-foot setback area. As such, the dwelling is a noncomplying structure and therefore constitutes a unique physical condition of the Property. Consequently, I find that the location of the dwelling and the lot's narrowness and small size are unique physical conditions which cause the Petitioners practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The two-story addition will be used for a permitted purpose and will not change the nature or intensity of use. The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located, nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the location of the noncomplying structure on the lot and the lot's size and narrowness, and was not created by the Petitioners, in accordance with Section 130.B.2.a(3).

4. The proposed addition is a reasonable size. Within the intent and purpose of the regulations, then, the variance is the minimum variance necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this 9th June 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Diane C. Anderson, for a variance to reduce the 30-foot rear setback to approximately 7 feet for a two-story addition to an existing noncomplying single family detached dwelling located in an R-12 (Residential: Single Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations") is **GRANTED**.

Provided, however, that:

1. The variance shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**



Michele L. LeFaivre

Date Mailed: _____

6/10/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.